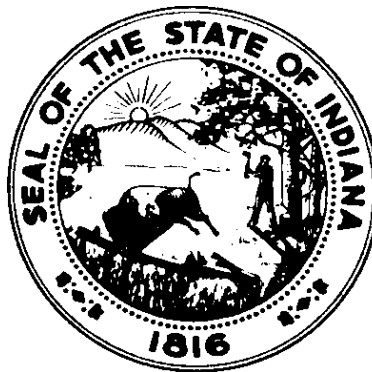


BUDGET SERVICE COMPANIES ACT

IC 28-1-29

As Amended Through July 1, 2001



NON-DEPOSITORY DIVISION

DEPARTMENT OF FINANCIAL INSTITUTIONS

402 West Washington Street, Room W-066
Indianapolis, Indiana 46204

CHAPTER 29

BUDGET SERVICE COMPANIES

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28-1-29-1 Definitions

Sec. 1. The following words, when used in this chapter, shall have the meaning ascribed to them unless the context clearly requires a different meaning:

(1) **"Person"** includes individuals, partnerships, associations, and corporations.

(2) **"Budget service company"** is any person doing business as a budget counseling, credit counseling, debt management, or debt pooling service or holding himself out, by words of similar import, as providing services to debtors in the management of their finances and debts, and contracting with the debtor for a fee to receive from the debtor and disburse any money or anything of value. "Budget service company" includes an entity that simply holds any check, personal check, money order, personal money order, draft, or any other instrument for the transmission of money.

(3) **"License"** means a license issued under the provisions of this chapter.

(4) **"Licensee"** means any person to whom a license has been issued pursuant to the provisions of this chapter.

(5) **"Contract debtor"** means a debtor who has entered into a contract with a licensee.

(6) **"Debt"** means an obligation arising out of personal, family, or household use.

(7) **"Debtor"** means an individual whose principal debts and obligations arise out of personal, family, or household use and shall not apply to persons whose principal indebtedness arises out of business purpose transactions.

(8) **"Department"** means the members of the department of financial institutions.

(9) **"Finances"** means a savings deposit that is:

(A) made on behalf of a contract debtor;

(B) owned and controlled exclusively by the contract debtor and not a licensee who has a power of attorney of the contract debtor; and

(C) placed in a bank or savings institution chartered by the state or federal government.

(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by P.L.14-199, SEC.107; P.L.42-1993, SEC.46; P.L.196-1996, SEC.1.

28-1-29-2 Administration of chapter

Sec. 2. The department shall adopt such rules and regulations as it deems advisable for the administration of this chapter, and to provide such forms and procedures as it determines to be necessary to carry out the provisions of such chapter. *(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by P.L. 42-1993, SEC.47.*

28-1-29-3 License; fees

Sec. 3. (a) No person shall operate a budget service company in the State of Indiana without having obtained a license from the department. The director may request evidence of compliance with this section at the time of application or after a license is issued. The evidence of compliance may include, but is not limited to, an official report of criminal activity from the state in which the applicant resides. The fee for a license or renewal shall be fixed by the department under IC 28-11-3-5 and shall be nonrefundable. A licensee failing to renew annually shall be required to pay a fee fixed by the department under IC 28-11-3-5 for a new application.

(b) If a person knowingly acts as a budget service company in violation of this chapter, any agreement the person has made under this chapter is void and the debtor under the agreement is not obligated to pay any fees. If the debtor has paid any amounts to the person, the debtor, or the department on behalf of the debtor, may recover the payment from the person that violated this section

(c) A license issued under this section is not assignable or transferable. *(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by P.L. 42-1993, SEC.48; P.L.172-1997, SEC 18; P.L.134/63-2001, SEC.13.*

28-1-29-4 Denial, suspension or revocation of license; grounds; procedure

Sec. 4. (a) The department may revoke or suspend any license issued under this chapter for the following causes:

1. Conviction of a felony or of a misdemeanor involving moral turpitude.
2. Violation of any of the provisions of this chapter.
3. Fraud or deceit in procuring the issuance of a license or renewal under this chapter.
4. Indulging in a continuous course of unfair conduct.
5. Insolvency, bankruptcy, receivership or assignment for the benefit of creditors by a licensee.
6. Licensee lending money to any debtor that has subscribed to the licensee's services.
7. Except as provided in subsection (c), offering to pay or give any cash, fee, gift, bonus, premiums, reward or other compensation to any person for referring any prospective customer to the licensee.
8. Except as provided in subsection (d), receiving any cash, fee, gift, bonus, premium, reward or other compensation from any person other than the debtor in connection with his activities as a licensee.
9. Licensee requiring a debtor to purchase or agree to purchase a policy of insurance from which licensee receives a fee or other remuneration.
10. If the licensee violates any reasonable rule or regulation made by the department under and within the authority of this chapter.
11. Misleading advertising or representing that the licensee can provide protection from legal recourse or suits of creditors.

(b) Except as provided in section 4.1 of this chapter, the denial, revocation or suspension shall be made only after specific charges have been filed in writing, under oath, with the department or by the department, whereupon a hearing shall be had as to the reasons for such denial, revocation or suspension and a certified copy of the charges shall be served on the licensee or the applicant for license not less than ten (10) days prior to the hearing.

(c) Notwithstanding subsection (a)(7), a licensee may reduce the fees of a contract debtor who is a client of the licensee if the contract debtor refers a prospective customer to the licensee.

(d) Notwithstanding subsection (a)(8), a licensee may receive a fair share creditor fee, based on disbursements made to the creditor, from a debtor's creditors. If any creditor refuses to pay the fair share creditor fee, the creditor must still be included in the contract debtor's payment plan.

(e) If the director of the department:

- (1) has just cause to believe an emergency exists from which it is necessary to protect the interests of the public; or
- (2) determines that the license was obtained for the benefit of, or on behalf of, a person who does not qualify for a license,

the director may proceed with the revocation of the license under IC 4-21.5-3-6. (*Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.*) *As amended by P.L. 42-1993, SEC.49; P.L. 196-1996, SEC.2; P.L.80-1998, SEC. 10.*

28-1-29-4.1 Revocation of License

Sec. 4.1. (a) A license issued by the department under this chapter shall be revoked by the department if the person fails to:

- (1) file any renewal form required by the department; or
- (2) pay any license renewal fee described under section 3 of this chapter;

for a period of at least two (2) years.

(b) A person whose license is revoked under this section may:

- (1) pay all delinquent fees and apply for a new license; or
- (2) appeal the revocation to the department for an administrative review under IC 4-21.5-3. Pending the decision resulting from the hearing under IC 4-21.5-3 concerning the license revocation, the license remains in force. Added by P.L.176-1996, SEC.16.

28-1-29-4.5 Collection agencies or process servers; licenses; restriction

Sec. 4.5. After August 31, 1981, the department may not issue a license to any person who is an employee of, owner of, or affiliated in any way with a collection agency or a process serving business. Any person who was granted a license before September 1, 1981, is not affected by the restriction imposed in this section. *As added by Acts 1981, P.L.256, SEC.1. As amended by P.L. 42-1993, SEC.50.*

28-1-29-4.6 Examination; license applicants - Repealed by P.L.196-1996, SEC.5**28-1-29-5 Application for license**

Sec. 5. Every person doing business as a budget service company shall make application to the department for a license to engage in such business. Such application shall be in the form prescribed by the department, and shall contain the following information together with such further information as the department may require.

(1) The department may not issue a license unless the department finds that the financial responsibility, character, and fitness of.

(A) the applicant; and

(B) the:

- (i) members of the applicant, if the applicant is a partnership or association; or
- (ii) officers and directors of the applicant, if the applicant is a corporation;

warrant belief that the business will be operated honestly and fairly under this article. The department is entitled to request evidence of a licensee's financial responsibility, character, and fitness.

(2) Upon written request, an applicant is entitled to a hearing under IC 4-21.5 on the question of the

qualifications of the applicant for a license. *(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by P.L.42-1993, SEC.52; P.L.80-1998, SEC.11.*

28-1-29-6 Bond

Sec. 6. Each application for a license shall be accompanied by a bond to the State of Indiana in the sum of twenty-five thousand dollars (\$25,000) with surety to the satisfaction of the department and be approved as to form by the State's Attorney General, conditioned upon the faithful performance of the rules and regulations of the Department and in compliance with the laws of the State of Indiana. Said bond shall also indemnify any person damaged by failure on the part of the licensee to conduct the business in accordance with the provisions of this chapter. *(Formerly: Acts 1971, P.L.397 SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by Acts 1981, P.L.256, SEC.3; P.L.42-1993, SEC.53.*

28-1-29-7 Display of license

Sec. 7. When a license has been issued such license shall be prominently displayed by the licensee in his place of business. *(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.)*

28-1-29-8 Licensees; requirements and restrictions; business operations

Sec. 8. A Licensee:

(1) Shall deliver to every contract debtor, at the time the contract is made, a copy of the contract, showing the

(A) date executed;

(B) the rate of charge the licensee will impose;

(C) initial set up fee;

(D) the cancellation fee; and

(E) amount of debts claimed by the contract debtor to be due his creditors;

(F) total amount of fee to be assessed by the licensee, including the initial set-up fee, but excluding the cancellation fee; and

(G) total amount of debt to be repaid under the contract;

and shall immediately notify all creditors of the licensee's and debtor's relationship. The contract shall specify the schedule of payments from the debtor under the debt program.

(2) May take no fee unless a debt program or finance program, or both agreed upon by the licensee and the contract debtor has been arranged. All creditors must be notified of the debtor's and licensee's relationship. Acceptance of a program payment constitutes agreement by the creditor.

(3) Shall give to the contract debtor a dated receipt for each payment, at the time of the payment, unless the

payment is made by check, money order, or direct deposit.

(4) Shall, upon cancellation by contract debtor of the contract, notify immediately in writing all creditors of contract debtor.

(5) Shall maintain in his business such books, accounts, and records as will enable the department or the state's attorney general to determine whether such licensee is complying with this chapter. Such books, accounts, and records shall be preserved for at least three (3) years after making the final entry of any contract recorded therein.

(6) May not, except as provided in subdivision 7, receive a fee from the contract debtor for services in excess of fifteen percent (15%) of the amount the debtor agrees to pay through the licensee, divided into equal monthly payments over the term of the contract. The total monthly amount of fees paid by the contract debtor to the licensee plus the fair share fees paid by the contract debtor's creditors to the licensee shall not exceed twenty percent (20%) of the monthly amount the debtor agrees to pay through the licensee. The accrual method of accounting shall apply to the creditor's fair share fees received by the licensee. The program fee may be charged for any (1) month or part of a month. As a portion of the total fees and charges stated in the contract, the licensee may require the debtor to pay a maximum initial payment of fifty dollars (\$50). The initial payment must be deducted from the total contract fees and charges to determine the monthly amortizable amount for subsequent fees. Unless approved by the department, the licensee may not retain in the debtor's trust account, for charges, an amount more than one (1) month's fee plus the close-out fee. Any fee charged by the licensee to the debtor under this section for services rendered by the licensee, is not considered a debt owed by the debtor to the licensee.

(7) Upon cancellation by contract debtor or termination of payments by contract debtor, may not withhold for his own benefit, in addition to the amounts specified in subdivision (6), more than one hundred dollars (\$100), which may be accrued as a close-out fee. The licensee may not charge the contract debtor more than one (1) set up fee, or cancellation fee, or both unless the contract debtor leaves the services of the licensee for more than six (6) months.

(8) May not accept an account unless a thorough, written budget analysis of the debtor indicates that the debtor can reasonably meet the payments required in the budget analysis.

(9) May not enter into a contract with a contract debtor for a period longer than twenty-four (24) months.
(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by Acts 1981, P.L.256, SEC.4; P.L.42-1993, SEC.54; P.L.196-1996, SEC.3; P.L.134/63-2001, SEC. 14.

28-1-29-9 Trust funds; requirements and restrictions

Sec. 9. (a) All funds received by a licensee or his agent from and for the purpose of paying bills, invoices or accounts of a debtor shall constitute trust funds owned by and belonging to the person from whom they were received. All such funds received by a licensee shall be separated from the funds of the licensee not later than the end of the same business day following receipt by the licensee. All such funds shall thereafter be kept separate and apart at all times from funds belonging to the licensee or any of its officers, employees or agents and may be used for no purpose other than paying bills, invoices, or accounts of said persons. All such trust funds received at the main or branch offices of a licensee shall be deposited in a bank or banks in an account or accounts in the name of the licensee designated "trust account," or by some other appropriate name indicating that the funds are not the funds of the licensee or its officers, employees or agents, on or before the close of the same banking day following receipt.

(b) Prior to separation and deposit by the licensee such funds may only be used by the licensee for the making of change or the cashing of checks in the normal course of its business. Such funds are not subject to attachment, levy of execution or sequestration by order of court except by an obligor for whom a licensee is acting as an agent in paying bills, invoices, or accounts.

(c) Each licensee shall make remittances within thirty (30) days after initial receipt of funds, and thereafter

remittances shall be made within fifteen (15) days of receipt, less fees and costs, unless the reasonable payment of one (1) or more of the debtor's obligations requires that the funds be held for a longer period so as to accumulate a sum certain. For the purpose of this section, the cancellation fee set forth in Section 8(7) of this chapter shall not be deemed an obligation of the debtor.

(d) At least once every (3) months' period, the licensee shall render an accounting to the debtor which shall itemize the total amount received from the debtor, the total amount paid each creditor, the amount of charges deducted, and any amount held in reserve. A licensee shall, in addition thereto, render such an accounting to a debtor within seven (7) days after written demand, but not more than three (3) per six (6) month period. *(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by P.L.196-1996, SEC.4.*

28-1-29-10 Examination of books; expenses

Sec. 10. The department will examine all books, records, and accounts of any person doing business as a budget service company at least once a year. The cost of such examination will be paid by the company upon a fee fixed by the department under IC 28-11-3-5. The record keeping system of a licensee shall be made available in Indiana for examination. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. For the purpose of discovering violations of this chapter and securing information necessary for the enforcement of this chapter, the department may investigate a licensee or person that the department suspects is operating without a valid license and in violation of this chapter. *(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by P.L.42-1993, SEC.55.*

28-1-29-11 Impounding of books, records, and accounts

Sec. 11. Upon affidavit of any person, or other information that the licensee has failed to comply with the provisions of this chapter, and after a preliminary investigation indicates probable cause that a violation has occurred, the department shall have authority to impound such books, records, and accounts as it deems necessary. *(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by P.L.263-1985, SEC.108.&EHST; P.L.42-1993, SEC.56.*

28-1-29-12 Exemptions from chapter

Sec. 12. This chapter does not apply to any attorney at law authorized to practice in this state, or to any individual, partnership, association, limited liability company, or corporation doing business or operating in this state as a trust company or building and loan association licensed lending institution, court appointed receivers, trustees in bankruptcy or any not-for-profit corporation providing the services of a budget service company which does not charge the debtor any fee for such services; so long as such persons comply with section 9 of this chapter and any person in charge of such trust funds be bonded for the sum of at least twenty-five thousand dollars (\$25,000). *(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by Acts 1981, P.L.256, SEC.5; P.L.42-1993, SEC.57.*

28-1-29-13 Violations

Sec. 13. In addition to the revocation provision of section 4 of this chapter, a person who violates section 3, 5, 6, 8, or 9 of this chapter commits a Class A misdemeanor, and the license of the licensee shall be revoked on the date of the conviction of an offense. *(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by Acts 1978, P.L.2, SEC.2815; P.L.42-1993, SEC.58.*

28-1-29-14 Review of department decisions

Sec. 14. Any applicant for a license aggrieved by a decision of the department pursuant to this chapter may file a petition for review as prescribed in IC 4-21.5. *(Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6.) As amended by P.L.7-1987, SEC.160; P.L.42-1993, SEC..*

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